

March 16, 2001

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-01-01

PRIVACY AND PERSONNEL FOLDERS

1. **Purpose.** This Human Resources Management Letter (HRML) provides guidance on disclosing information from personnel folders, accounting for these disclosures, and amending records in personnel folders. This HRML only discusses the Official Personnel Folder (OPF) and Merged Records Personnel Folder (MRPF). It does not apply to other personnel records. The term "personnel folder" includes the OPF and MRPF.

2. **Disclosure-General.** The Privacy Act prohibits disclosure of records from personnel folders without the prior written consent of the individual to whom the record pertains unless it meets one of the exceptions in the Privacy Act. For a complete list of these exceptions, see 5 U.S.C. 552a(b). (An electronic version may be located by entering "5 USC 552a" at <http://uscode.house.gov/usc.htm#search>.) Under the most common exceptions, disclosures may be made without the employee's consent if they are:

a. **Department Officials.** Department of Veterans Affairs (VA) officials have a right to information they need in the performance of their duties provided the information is relevant and necessary to the purpose for which the information is sought. However, supervisors, selecting officials, members of merit promotion panels, members of professional standards boards, and other VA officials are not to be given access to information that does not meet this criterion. For example, these officials would rarely need information related to employee benefits elections. This means access to the documents in the personnel folder must be limited to the documents needed and human resources officials must sanitize information that is not relevant and necessary from any documents provided to VA officials so that protected information is not improperly disclosed. See paragraph 3c below.

b. **Disclosed Under FOIA.** Further details on releasing information to the public under FOIA can be found in the Office of Personnel Management (OPM) Guide to Personnel Recordkeeping, Chapter 6. See <http://www.opm.gov/feddata/guidance.htm>.

c. **Routine Uses.** These are described in the applicable Federal Register system of records notice. The routine uses applicable to records in personnel folders can be found in the OPM system of records entitled General Personnel Records, OPM/GOVT-1 (for OPFs) and the VA system of records entitled General Personnel Records (Title 38)-VA, 76VA05 (for MRPFs). The latest version of OPM/GOVT-1 may be found on page

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24732, Federal Register, April 27, 2000. 76VA05 may be found on page 45131, Federal Register, July 20, 2000. Copies of OPM/GOVT-1 may be seen at http://www.opm.gov/fedregis/html/apr_00.htm and copies of 76VA05 may be accessed through GPO Access (http://www.access.gpo.gov/su_docs/aces/aces140.html). Under "Federal Register Volume" select the "2000 Federal Register" and under Federal Register Sections select "Notices." Under "Issue Date" activate the "On" button and enter the date "07/20/2000;" under "Search Terms" enter "76VA05;" and select "SUBMIT."

d. **For Law Enforcement Purposes.** Information may be disclosed to another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to VA specifying the particular portion desired and the law enforcement activity for which the record is sought. You are authorized to disclose records from the personnel folder to local, state, or Federal law enforcement authorities engaged in investigations if their request is:

(1) Written;

(2) Signed, either by the head of the requesting law enforcement entity, or by an individual to whom authority to sign such requests has been delegated;

Note: *Generally, the delegation must accompany the request and should specifically indicate that the delegation is made for Privacy Act (5 U.S.C. 552a(b)(7)) purposes. The requesting official must be of sufficient rank and authority to ensure that the requesting agency conducted a high level determination of its need for the confidential information prior to asking for it, e.g., the Special Agent-in-Charge of a Federal Bureau of Investigation Field Office, an Internal Revenue Service District Director, or a United States Attorney.*

(3) For an authorized civil or criminal law enforcement purpose;

(4) Specific as to the record or portion of the record sought; and

(5) Specific as to the particular law enforcement investigation activity for which the record is sought.

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e. **To Congress**

(1) Oversight Requests. Relevant disclosures may be made to any oversight committee, subcommittee, or joint committee of Congress to the extent a matter is within its jurisdiction. Requests for Privacy Act-protected records from a congressional oversight committee or subcommittee of jurisdiction must be made in writing on committee letterhead and signed by the committee or subcommittee chair. If it is not clear whether a Member of Congress is seeking a record for oversight purposes, you should request clarification. The reply letter to the Member of Congress should document the clarification provided and your decision to provide records for the conduct of oversight activities. If there is a question as to whether a particular committee or subcommittee has oversight jurisdiction over VA, further assistance may be requested from the Customer Advisory and Consulting Group (051).

(2) Constituent Inquiries. When a Member of Congress makes an inquiry on behalf of a constituent employee, VA may release information from the OPF and MRPF without the prior written consent of the employee pursuant to a routine use in both OPM/GOVT-1 and 76VA05. VA may release relevant employee information in response to a constituent inquiry from someone other than the employee only with the prior written consent of the employee.

f. **To a Court of Competent Jurisdiction.** Records from the personnel folder may be disclosed without the employee's consent pursuant to a court order. However, the "court" must be part of the judicial branch of the government, not a part of either the executive or legislative branches. An "order" must be a document signed by a court official with the power to enforce the order, e.g., with the power ultimately to impose contempt sanctions. If the court official must obtain authority from some other entity or official to enforce the order, e.g., to a Federal district court judge, the order does not qualify as a court order for the purposes of the Privacy Act.

3. **Disclosure-Procedures.** These procedures are designed to assist you in complying with the Privacy Act. They are also designed to protect original copies of personnel folders against loss by minimizing unnecessary movement of original personnel folders in situations where they are being maintained off site.

a. **General**

(1) A human resources representative must be present when the personnel folder is reviewed by the employee to ensure the integrity of the record. (See OPM Guide to Recordkeeping, Paragraph 6, "Access Requests"). When a requester seeks to obtain

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original documentation, it will normally not be provided. VA reserves the right to limit the request to *copies* of the original records. In addition, a human resources representative should be present when the original record is reviewed by a requestor other than the employee. See 5 CFR 297.202(c) and 38 CFR 1.577(c).

(2) Employees may have a person of their choice accompany them when reviewing records from the personnel folder. However, if accompanied, the individual must sign a written statement authorizing discussion of that individual's record in the accompanying person's presence. The VA Form 5571, Authorization to Disclose a Record in the Presence of a Third Party, may be used for this purpose. These forms are not to be filed in the personnel folder, but are to be retained by the servicing human resources office for two years. See VA Handbook 6300.4, paragraph 3c(3) and 38 CFR 1.577(a).

(3) If personnel folders are centrally located, procedures adopted by the office maintaining the personnel folders should provide that the original personnel folder may only be requested by the appropriate servicing human resources representative. In addition, to protect the employee's privacy and to maintain proper control, original personnel folders should only be sent to the requesting human resources representative. Procedures may also be established to provide that *copies* of documents from the personnel folder may be sent directly to an employee who is the subject of the folder or to other authorized VA officials. However, the custodian of the personnel folder must assure the employee's identity and that any copies sent is received by that employee.

b. Employees

(1) Employees or their representative(s) designated in writing may have access to or receive at no cost copies of records that have not been previously furnished. Additional copies will be provided; however, there may be a charge in accordance with the Department fee schedule in effect at the time of the request. See 38 CFR 1.577(f).

(2) Employees should be advised that they might limit the access of their representative to only those records in the personnel folder that are needed to process their claim (grievance, appeal, etc.).

Note: *If an employee limits the access of his or her representative to specific information in the personnel folder, the servicing human resources office should use the procedures in paragraph 3c(1) through 3c(3) below. In addition, the employee's authorization to release the information must be retained as indicated in paragraph (3).*

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(3) If the employee's consent is required to release information (i.e., if none of the exceptions referred to in paragraph 2 apply), the consent must be in writing and it must be obtained before the information is released. Form Letter 70-21, Request for Individual's Consent to Disclose Records, may be used for this purpose. The Form Letter 70-21, any related correspondence, and a copy of any records provided on behalf of the employee are not to be filed in the personnel folder. However, these documents are to be retained in the servicing human resources office for two years.

(4) The scope of the consent cannot be so vague or general that it is questionable whether the employee knows what he or she was authorizing or whether VA knows what documents it can lawfully release. In addition, the consent provision is not intended to permit a blanket or open-ended authorization that would permit VA to disclose information without limit. At a minimum, the consent should state the general purpose for the disclosure, the recipient(s) to which the disclosure may be made, and the time frame within which the authorized disclosure may be made.

c. VA Officials Who Need Records from Personnel Folders in the Performance of Their Duties

(1) When presented with requests for information, the servicing human resources staff and requesting official should reach an agreement concerning the specific information needed (based on the criteria in paragraph 2a above) and the best way to provide the information. For example, sources other than the personnel folder may be available. Information requested by members of Professional Standards Boards would typically be available in the Competency or Employee Performance Folder. Similarly, if not already in place, facilities should establish procedures that will provide merit promotion panel members with the information they need without having to access the personnel folder. This might be done by having a human resources representative at the panel to review personnel folders of applicant and provide panel members with the information they need.

Note: *If agreement concerning the information to be provided cannot be reached locally, servicing human resources office are to seek guidance from their Regional Counsel.*

(2) Once agreement is reached, the document(s) containing the required information are assembled. This would include requesting documents from a centralized location, if appropriate. (Where personnel folders are located off-site, the local human resources representative should only request needed documents or information for transmission to the local facility whenever possible. This keeps movement of personnel folders to a minimum.)

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(3) Copy needed information for the requesting official (do not release any original documents) and sanitize any information from those the copies to be provided that is not relevant and necessary to the purpose for which the information is being sought.

d. **Other Disclosures.** Procedures for other disclosures (under FOIA, pursuant a routine use, to a law enforcement agency, Congress or a court) are addressed in paragraphs 2b through 2f above.

4. **Accounting for Disclosures**

a. **Disclosures Covered.** Disclosures of information from personnel folders must be accounted for except as provided in paragraph c. This includes the disclosure of information to:

(1) An individual or organization under a “routine use” described in paragraph 2c above (e.g., disclosures to other Federal agencies for staffing purposes or disclosures to accrediting bodies, such as the Joint Commission on the Accreditation of Healthcare Organizations);

(2) The Bureau of the Census under Title 13, U.S.C.;

(3) The Comptroller General of the United States or authorized representatives to carry out the duties of the General Accounting Office;

(4) The National Archives and Records Administration in the performance of their duties;

(5) A Member of Committee of Congress in situations where the employee’s consent is not required (see paragraph 2(e));

(6) A person showing a compelling interest affecting the health or safety of the employee, provided notification of the disclosure is sent to the employee’s last known address;

(7) A court of competent jurisdiction under paragraph 2f above;

(8) A consumer reporting agency under 31 U.S.C. 3711(e); and

(9) Another agency or instrumentality for civil or criminal law enforcement purposes. (see both paragraphs 2d and 4g).

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b. **Accounting Procedures.** This includes an accounting of the date, nature, purpose of disclosure, a brief description of the record disclosed, authority for the disclosure, and the name and address of the person or agency to which the information is disclosed. See 5 U.S.C. 552a(c).

c. **Exceptions.** When information is disclosed from a personnel folder, it need not be accounted for if it is to:

- (1) The employee who is the subject of the folder (paragraph 3b(1));
- (2) Someone who has the employee's prior written consent to release the information (paragraph 3b(3));
- (3) A VA employee who needs the record in the performance of their duties (paragraph 2a above); or
- (4) The public under the Freedom of Information Act (paragraph 2b above).

d. **Responsibility.** The office responsible for maintaining personnel folders is responsible for developing procedures for documenting disclosures. If personnel folders are centrally maintained, the procedures must provide a method for coordinating between the central and off-site locations to ensure that disclosures are properly documented.

e. **How Long Accounting is Retained.** The accounting of disclosures must be maintained for the life of the record. (The National Personnel Records Center destroys personnel folders 65 years after an employee's separation from Federal service.)

f. **Where to Maintain Accounting.** Information concerning disclosures need not be maintained in the personnel folder. However, the information must be filed on the right-hand side of the personnel folder once custody of the personnel folder changes (e.g., reassignment, transfer, retirement, separation, or transferring custody of the personnel folder to the Shared Service Center). If the information is not being maintained in the personnel folder, the custodian must ensure that it is readily retrievable, as it must be transferred when custody of the record transfers and made available to the employee at the employee's written request. VA Form 5572, Accounting of Records/Information Disclosure Under Privacy Act, may be used for this purpose.

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g. **Employee Requests.** Employees may submit a written request for an accounting of disclosures made from their records. The request must be signed and specify the record(s) about which the employee is requesting information. The accounting of disclosures discussed in paragraph 4a (other than the accounting of disclosures made to law enforcement agencies under paragraph 2d) will be made available to the employee.

5. **Amendment of Records in the Personnel Folder**

a. **Request to Amend Records.** Employee requests for amendments should be directed to the office with custody of the personnel folder. The records custodian is to work with the employee (and the servicing human resources office, if the records are centralized) to resolve the issue. If the custodian is unable to amend the record, the employee will receive assistance in filing a formal request for amendment as indicated in paragraph b below.

b. **Processing Requests.** Formal requests to amend documents in the Official Personnel Folder are to be processed in accordance with 5 CFR Part 297, Subpart C. Requests to amend documents in the Merged Records Personnel Folder are processed in accordance under 38 CFR 1.579 and 1.580, and VA Handbook 6300.4, Procedures for Processing Requests for Records Subject to the Privacy Act.

c. **Denying Requests.** Upon receiving a final administrative determination denying a request to amend a record, the requester may file a concise statement of disagreement. Such a statement should include the reasons why the requester believes the decision to be incorrect. The statement will be maintained with the record to be amended and any disclosure of the document is to include a copy of the statement of disagreement.

6. **Further Information.**

a. **Availability of Forms.** VA Forms 5571 and 5572 are available from the Hines Service and Distribution Center by calling (708) 786-7761. Hines will also distribute Form Letter 70-21 simultaneously with the approval of this HRML.

b. **Guidance.** Any questions concerning this letter may be referred to Chuck McClellan, Customer Advisory and Consulting Group (051), (202) 273-8262, or <mailto:Charles.McClellan@mail.va.gov>.

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